

September 7, 2007

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Summary

MetroPCS Communications, Inc. ("MetroPCS") is replying to comments filed in response to the *Notice* on the proposed procedures for the upcoming FCC Auction No. 73 of 700 MHz Band licenses. In reply, MetroPCS asserts that the Bureau should:

- Heed the calls of the majority of commenters to (1) Provide more rather than less information before and during the 700 MHz Band auction; (2) Limit the length of time the anti-collusion rule applies; (3) Allow multiple bid increments; and (4) Lower minimum opening bids to Auction No. 66 levels
- Maintain the proposed reserve prices for the initial 700 MHz Band auction based on Auction No. 66 results, as directed by the Commission
- Abandon the package bidding approach due to the many infirmities that have been identified
- In the event the Bureau permits package bidding, revise the package bidding procedures to decrease any bias in favor of the package bidder and add a stage one with a 60% activity threshold
- Clarify that any re-auction will be classified as a separate auction for bidding purposes

The public interest justifications for these proposed changes to the auction procedures are set forth in detail within.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
)

Auction of 700 MHz Band Licenses)
Scheduled for January 16, 2008)
)
_____)

AU Docket No. 07-157

REPLY COMMENTS OF METROPCS COMMUNICATIONS, INC.

MetroPCS Communications, Inc. (“MetroPCS”),¹ by its attorneys, hereby submits its reply to the comments filed in response to the *Public Notice* (the “*Notice*”)² in which the Wireless Telecommunications Bureau (the “Bureau”) of the Federal Communications Commission (the “FCC” or the “Commission”) sought comment on the procedures to be used in the upcoming auction of licenses in the 698-806 MHz bands (the “700 MHz Band”). The following is respectfully shown:

¹ For purposes of these Comments, the term “MetroPCS” refers to the parent company (MetroPCS Communications, Inc.) and all of its FCC-licensed subsidiaries.

² *Auction of 700 MHz Band Licenses Scheduled for January 16, 2008; Comment Sought Competitive Bidding Procedures for Auction 73*, AU Docket No. 07-157, Public Notice, DA 07-3415 (released Aug. 17, 2007).

I. THE BUREAU SHOULD (1) PROVIDE MORE RATHER THAN LESS INFORMATION BEFORE AND DURING THE AUCTION, (2) LIMIT THE LENGTH OF TIME THE ANTI-COLLUSION RULE APPLIES, (3) ALLOW MULTIPLE BID INCREMENTS, AND (4) LOWER MINIMUM OPENING BIDS TO AUCTION NO. 66 LEVELS

A. The Commission Should Provide More Rather than Less Information Prior to and During the 700 MHz Band Auction

MetroPCS agrees with the majority of commenters who recommend that the Bureau distribute as much information as possible - - without compromising anonymity - - both prior to and during the auction of the 700 MHz Band spectrum.³ For instance, MetroPCS agrees with the Coalition for 4G in America that, as in past auctions, the Bureau should continue “to provide round-by-round information on the number and size of each bid on each license and package, stripping out only the identification of each bidder.”⁴ In addition, MetroPCS agrees with the Blooston Rural Carriers that “the Commission should make limited additional information available to each applicant about those bidders that have overlapping geographic areas specified on their short forms,” including “the license blocks for which the competing applicants have made themselves eligible to bid.”⁵ The Bureau also should clarify, as requested by Verizon Wireless’ request, that “it will release in advance of the auction a list of the auction applicants and provide access to the ownership information in other applicants’ Forms 175.”⁶ Finally, MetroPCS agrees with United States Cellular (“US Cellular”) that the Bureau should “release the aggregate eligibility ratio for each round (the ratio of total bidding units held by all bidders to the

³ MetroPCS also agrees with those commenters advocating that the Commission abandon the use of anonymous bidding entirely. However, given the fact that the Commission has held that anonymous bidding will occur for this auction, any opposition on this point must be raised in a petition for reconsideration of the *700 MHz Order*.

⁴ Coalition for 4G in America Comments at 9.

⁵ Blooston Rural Carriers Comments at 3-4.

⁶ Verizon Wireless Comments at 9.

total bidding units of all licenses in the auction).”⁷ Providing the above information would not reveal bidder identities and would not undermine the Commission’s concern about “anti-competitive bidding behavior, including bidding activity that aims to prevent the entry of new competitors.”⁸ Rather, such information would allow bidders to better discern the market value for the licenses and enable them to anticipate when the auction may change phases or have an increased number of bidding rounds per day.⁹

B. The Bureau Should Limit the Length of Time the Anti-Collusion Rule Applies

MetroPCS strongly urges the Bureau to heed the call of those who urge the Commission to take into account the ramifications of the anti-collusion rule when setting its deadline for short-form applications, the commencement date of the auction, and the time period between the two auctions.¹⁰ Like MetroPCS, Verizon Wireless has asked the Bureau to tighten the auction schedule and revise its procedures to decrease the amount of time bidders are subject to the anti-collusion rule.¹¹ As previously noted by MetroPCS, “the anti-collusion rule can have a chilling effect on pro-competitive discussion between applicants that are only tangentially related to an auction.”¹² Thus, the period that the anti-collusion rule applies should be limited as much as possible.

⁷ US Cellular Comments at 4.

⁸ Notice at para. 14; MetroPCS Comments at 8.

⁹ It makes a difference whether one or more than one bidder believes a license is worth a particular amount. This information will not allow bidders to determine bidder identities and will be helpful to maintain an efficient auction.

¹⁰ MetroPCS has suggested that the Bureau should set December 12, 2007 as the due date for short-form applications and January 25, 2008 as the commencement date for the 700 MHz Band auction. MetroPCS Comments at 5.

¹¹ Verizon Wireless Comments at 2.

¹² MetroPCS Comments at 24.

Verizon also urges the Bureau to allow as short a period as possible between the initial auction and any subsequent auction.¹³ MetroPCS agrees. Since the applications will already have been reviewed and bidder eligibility determined, there is no reason that the time period needs to be any longer than a week or two – which should allow bidders time to pay their upfront payments. MetroPCS also supports the Verizon Wireless request that the Bureau clarify that no down payment or final payment is due for licenses won in the initial auction, prior to any subsequent auction.¹⁴ Even if these improvements are made, nevertheless, the Bureau still should establish procedures for applicants to opt-out of any subsequent auction, and thus no longer be subject to the anti-collusion rule, as proposed in the MetroPCS Comments.¹⁵ Since the period of time for both auctions plus pre-auction commencement period could easily run more than six months, bidders need an opportunity to opt-out of the process if they are not interested in the re-auctioned licenses and be able to submit their long form applications to stop the applicability of the anti-collusion rule. And, MetroPCS agrees with commenters who suggest that high bidders in the initial auction should be allowed to reveal that they are an initial auction winner prior to the end of the anti-collusion period for any subsequent re-auction, to the extent necessary pursuant to other laws and regulations.¹⁶ Otherwise, bidders who may make material purchases will not be able to engage in a number of securities transactions, such as selling notes or raising additional funds. Thus will chill bidding and may lead to bidders deciding not to participate in any subsequent auction.

¹³ Verizon Wireless Comments at 2-4.

¹⁴ *Id.* at 2.

¹⁵ MetroPCS Comments at 24-25.

¹⁶ Verizon Wireless Comments at 8; Frontline Comments at Attachment A, 22-23.

C. The Bureau Should Allow for Multiple Bid Increments

Numerous commenters have joined MetroPCS in proposing that the Bureau allow for multiple bid increments in the 700 MHz auction.¹⁷ As MetroPCS previously noted, bidders may need the ability to bid several multiples of bid increments in order to bid up to the full amount at which they value particular licenses.¹⁸ This view was echoed by numerous commenters. As noted by Frontline, “[l]imiting the bid increments limits the ability of relative prices to adjust.”¹⁹ Moreover, Karen Wrege and Karla Hoffman note that “allowing for multiple bid increments [is] critically important for bidders who value a license at a level higher than the current minimum acceptable price but less than the next round’s minimum acceptable price.”²⁰ In addition, Wrege and Hoffman point out that the Bureau’s proposal to calculate increases in minimum acceptable bid amounts for all blocks that remain at 20%, even after several rounds with no new bids, in combination with barring bidders from making bids in multiple incremental amounts “could prevent participants from bidding up to their final license values.”²¹ Thus, in the event the Bureau does not change its proposed procedure on bid increments, MetroPCS supports the Wrege and Hoffman proposal that Bureau should decrease the floor and ceiling from the proposed 10 and 20 percent, respectively to a floor of 5 percent and a ceiling of 10 percent.²² Either allowing for multiple bidding increments, such as during Auction No. 66, or decreasing

¹⁷ MetroPCS Comments at 16-17.

¹⁸ *Id.* at 16.

¹⁹ Frontline Comments at Attachment A, 24.

²⁰ Karen Wrege and Karla Hoffman Comments at 5. MetroPCS does not agree with Wrege and Hoffman that multiple bid increments should only be allowed in a “best and final” bid situation. A bidder could want to use a multiple bid increment to bid the full extent of its current valuation and authority on a license, but both the valuation and the authority could change over time (e.g. the bidder could outbid on another license which made more bidding eligibility available elsewhere).

²¹ *Id.* at 5-6.

²² *Id.* at 7-8.

the proposed ceiling and floor as described above, will “minimize the bid increment problem and allow bidders to bid up to their final values.”²³

D. The Bureau Should Revise its Proposed Minimum Opening Bids to the Auction No. 66 Amounts

A number of commenters agreed with MetroPCS that reducing the minimum opening bids for the 700 MHz Band auction would be in the public interest.²⁴ As MetroPCS noted in its Comments, “by setting its minimum opening bid prices so high, the Commission increases the likelihood that certain licenses will remain unsold at the end of the auction.”²⁵ Thus, MetroPCS proposed to “generally use the same minimum opening bids that were used for Auction No. 66 for the upcoming 700 MHz Band auction.”²⁶ For instance, the Coalition for 4G in America commented that “the AWS auction opening bids . . . would be a more appropriate opening bid level for the 700 MHz auction.”²⁷ Further, Blooston Rural Carriers suggest that the Bureau set minimum opening bids at the upfront payment levels for RSA licenses.²⁸ MetroPCS believes that any revisions to the minimum opening bid prices should be for all licenses (except as noted in footnote 26 below), and that the Bureau should lower its minimum bid prices, to Auction No. 66 levels, for the 700 MHz Band auction.

Moreover, a number of parties request that the minimum bid for the D Block spectrum be equal to the reserve price of the spectrum.²⁹ MetroPCS disagrees with this proposal. As

²³ *Id.* at 7.

²⁴ Coalition for 4G in America Comments at 13; Blooston Rural Carriers Comments at 5.

²⁵ MetroPCS Comments at 14.

²⁶ *Id.* at 16. MetroPCS also suggested that the Bureau, for licenses that sold for either the minimum opening bid or 2x the minimum opening bid in Auction No. 66, maintain a minimum opening bid of ¼ the minimum opening bid for Auction No. 66 for an equivalent license.

²⁷ Coalition for 4G in America Comments at 13.

²⁸ Blooston Rural Carriers Comments at 5.

²⁹ Verizon Wireless Comments at 5; Frontline Comments at Attachment A, 24.

MetroPCS indicated in its comments, having groups of licenses be bid methodically up to their market values provides useful information as to relative values. This is particularly important in this auction when the licenses are subject to so many different license obligations and restrictions. Having a high minimum opening bid would deny bidders on the D Block license a reasonable opportunity to determine the relative value placed on the D Block by the marketplace – rather, the price would effectively be set by the Bureau. This lack of information may limit a bidder’s ability to finance its bid if the license does not receive any other bids – which may be possible if the minimum bid is set near or at the market value of the license. Accordingly, the Bureau should retain the reserve price on the D Block, but not set it as the minimum opening bid. MetroPCS suggests that the D Block minimum bid prices should be the same as the A and B Block (adjusted to take into account that it is 10 MHz versus 12 MHz for the A and B Blocks).

II. THE BUREAU SHOULD NOT LOWER THE RESERVE PRICES FOR THE 700 MHZ BAND AUCTION

In its Comments, Frontline Wireless, LLC (“Frontline”) argues that the proposed reserve prices for the upcoming 700 MHz Band auction are too high, and that the Commission set them in a completely arbitrary manner. Frontline claims that spectrum prices are not “comparable” over time, and challenges the assumption that the Auction 66 prices provide a meaningful benchmark for the 700 MHz Band.³⁰ Frontline also asserts that the proposed reserve prices will incite strategic behavior among bidders to suppress their bids in the first auction to cause a second auction.³¹ Having itself been a major architect of the encumbrances placed on the C Block and D Block, Frontline now argues that the spectrum is devalued because (i) the D Block “depends on a still-to-be-negotiated network sharing agreement with Public Safety” and (ii) the

³⁰ Frontline Comments at 6, Attachment A, 13-14.

³¹ *Id.* at 3.

C Block “has open access provisions that are entirely new in the wireless markets.”³² Because of these “risk” factors, Frontline proposes reserve prices that are substantially less than proposed by the Bureau, under the guidance and direction of the Commission.³³

The Bureau should adopt the reserve prices it proposed and not accept the self-serving arguments of Frontline. Throughout the 700 MHz proceeding, many commenters - - including MetroPCS - - expressed concern that the encumbrances Frontline and others proposed for the C Block and D Block spectrum were “poison pills” that would drive away interested bidders and artificially depress the auction value of the spectrum. MetroPCS pointed out that the Congressionally-mandated competitive bidding procedures were intended to enable the public to receive fair value for valuable spectrum rights that were assigned to private parties, and that the public interest would not be served by allocation policies that devalued the spectrum unnecessarily. Also, Congress made clear in the DTV Act³⁴ its desire to fund both the digital transition and important public safety initiatives with the proceeds of the 700 MHz Band auction. Again, these public interest objectives would be undermined if the Commission failed to recoup reasonable value for the 700 MHz spectrum. In the face of these legitimate concerns, the Commission took the logical approach of putting reserve price safeguards in place to protect against excessively low prices as a result of regulatory encumbrances.

Frontline has failed to offer any compelling reason for the Commission to abandon its measured course. The reserve prices proposed by the Commission are reasonable. The Commission consistently has recognized that the 700 MHz Band spectrum is particularly

³² *Id.* at Attachment A, 6.

³³ *Id.* at Attachment A, 16-17.

³⁴ The DTV Act is the Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 1230 Stat. 4 (2006).

valuable, and that it has extremely valuable propagation characteristics.³⁵ For example, Commissioner Adelstein correctly observed in his *700 MHz Order* statement that “[t]hese 700 MHz licenses are the finest crown jewels the FCC has to put up for auction.”³⁶ And, the Commission carefully compared the 700 MHz unauctioned spectrum to the recently auctioned AWS spectrum and determined that the 700 MHz spectrum is particularly significant. The Commission observed that “spectrum in the 700 MHz Band possesses superior propagation characteristics to AWS-1 spectrum,”³⁷ and noted that “as of February 18, 2009, the 700 MHz Band spectrum will be completely unencumbered, while full access to AWS-1 spectrum requires the relocation of both Government and commercial incumbent users.”³⁸ Thus, the Commission properly concluded that “other factors, aside, 700 MHz Band licenses with comparable geographic service areas and bandwidth should have a higher market value on a per-megahertz basis than AWS-1 licenses.”³⁹ These analyses undermine the speculation by Frontline that 700 MHz spectrum is less valuable than the recently auctioned AWS spectrum.

In addition, the likely participation of a wide-range of parties - - both small, medium and nationwide carriers, as well a substantial number of new entrants - - many of whom have never bid on spectrum before - - assures that there will be robust participation in the 700 MHz Band auction. Companies such as Google, DirecTV, Intel, Skype, Yahoo!, Echostar, Frontline, and many others (including the major incumbent wireless carriers) which have access to billions of

³⁵ *In the Matter of Service Rules for the 698-746, 747-762 and 777-792 Bands, et. al*, WT Docket No. 06-150, CC Docket No. 94-102, WT Docket No. 01-309, WT Docket No. 03-264, WT Docket No. 06-169, PS Docket No. 06-229, WT Docket No. 96-86, WT Docket No. 07-166, Second Report and Order, FCC 07-132 at para. 203, 299 (rel. Aug. 10, 2007) (“*700 MHz Order*”).

³⁶ *Id.* at Statement of Commissioner Jonathan S. Adelstein.

³⁷ *Id.* at para. 304.

³⁸ *Id.*

³⁹ *Id.*

dollars of their own funds and of additional capital,⁴⁰ have participated extensively in this proceeding thus signaling an interest in bidding, and some, like Google, as noted below, have already indicated a desire to participate.

In addition, at least one potential bidder already has indicated that the restrictions attached to the 700 MHz Band spectrum blocks do not significantly devalue it in relation to AWS spectrum. In particular, Frontline's concern that the "risks" applied to particular blocks will drive down auction prices is largely undermined by Google's bid price proclamation of July 20, 2007. Google announced that it would "commit a minimum of \$4.6 billion to bidding in the upcoming auction," if the Commission applied even more restrictive provisions to the C Block spectrum than it ultimately adopted.⁴¹ In light of this expression of interest, which has not been countermanded by Google since the *700 MHz Order* was released,⁴² the Commission should not

⁴⁰ Frontline also argues that volatility in the capital markets may have a negative effect on auction prices. Frontline Comments at Attachment A, 5-7. However, many of the major potential bidders in the 700 MHz auction (Google, AT&T, Verizon) would appear either to have no need to utilize the capital markets for the purchase of spectrum or no problem raising funds. In addition, Frontline does not acknowledge that the condition of the capital markets today does not necessarily reflect the likely state of the capital markets six months from now. Indeed, the last thing the Bureau should do is adopt a reserve price based on a prediction of what the capital markets will do six months from now. That would be the worst possible use of "command and control" spectrum allocation techniques. Rather, if spectrum blocks do not meet the reserve prices that are properly based on Auction No. 66 results, the Commission should remove the onerous restrictions that it has placed upon the spectrum, as it has proposed. This is particularly true since Congress has scored the 700 MHz Band auction at over \$10 billion, and already has allocated billions of dollars of proceeds from the auction for DTV transition and various public safety interoperable funds. Indeed, congressional mandates regarding the uses for revenues from the 700 MHz Band auction total approximately \$10.1825 billion. *See 700 MHz Order* at para. 304. Thus, the Commission cannot lower the reserve prices to the levels requested by Frontline, and allow the possibility of spectrum being sold at severe discounts due to onerous restrictions, without completely disregarding Congressional intent.

⁴¹ *Ex Parte* of Google, WT Docket No. 06-150, PS Docket No. 06-229, WT Docket No. 96-86 (filed July 20, 2007).

⁴² *See* "Google CEO Says Mobile Auction Bid Still Probable," *eweek*, Aug. 22, 2007.

credit the Frontline claim that the 700 MHz Band spectrum may not be comparable in value to the AWS spectrum.

Section 309(j)(3) requires the Commission to balance several statutory objectives and empowers the Commission to use reserve prices to achieve these objectives.⁴³ Here, the Commission determined that it is appropriate to establish separate aggregate reserve prices “for each block of licenses to promote [its] statutory objective of recovering for the public a portion of the value of the public spectrum resource.”⁴⁴ The Commission wisely concluded that “the reserve prices should maximize the possibility of recovering an appropriate portion of the value of the public spectrum resource while enabling licensing as promptly as possible.”⁴⁵ The Commission’s directive to the Bureau to base the reserve prices for the 700 MHz spectrum blocks on their comparable Auction No. 66 spectrum blocks was well-reasoned and accurately reflects the Commission’s goal to “balanc[e] essential goals of assigning licenses on terms that serve the public interest, both with respect to service provided by licenses and recovery of value. . . .”⁴⁶ Moreover, the Commission’s determination that a failure of any conditioned 700 MHz spectrum to meet its AWS spectrum-based reserve price would “provide sufficient evidence to conclude that we have weighed the public interest balance incorrectly, and that the cost of the open platform restrictions was too high”⁴⁷ further demonstrates the Commission’s desire to maintain reserve prices consistent to what the Bureau has proposed – to ensure that the public receive fair value for the spectrum.

⁴³ 47 U.S.C. § 309(j)(7)(A).

⁴⁴ *700 MHz Order* at para. 298.

⁴⁵ *Id.* at para. 304.

⁴⁶ *Id.* at para. 308.

⁴⁷ *Id.* at para. 313.

Further, Frontline’s request is not made in the proper forum. In the *700 MHz Order*, the Commission recognized that the “Wireless Bureau should establish the particular amounts of the block-specific aggregate reserves by taking into account a conservative estimate of the market value based on auction results for AWS-1 licenses.”⁴⁸ The Commission also directed the Bureau to give “due consideration to Congress’s view as to the value of the spectrum, as reflected in Congressional mandates regarding the uses for revenues from this auction.”⁴⁹ Given these specific directives from the Commission to the Bureau, Frontline’s suggestion that the reserve price for 700 MHz spectrum blocks should be substantially lower than the AWS license prices may only properly be raised in a petition for reconsideration of the *700 MHz Order*, not in comments on the Bureau’s procedures *Notice*.

Lastly, Frontline argues that having a high reserve price will lead to gaming the system, and that “some bidders will employ strategies intended directly to ensure that a re-auction is necessary.”⁵⁰ However, Frontline ignores that the Bureau has established procedures to prevent parties from “gaming the system.” These procedures include default payments, bid withdrawals, and a limited number of activity waivers.⁵¹ Notwithstanding the pro-competitive benefits of having a high reserve price, Frontline proposes not having a default penalty on the D Block auction winner for failing to reach agreement with the public safety licensee.⁵² Frontline argues that acquiring access to public safety’s 12 MHz of spectrum will provide sufficient incentive to

⁴⁸ *Id.* at para. 304 (Emphasis Added).

⁴⁹ *Id.* at para. 305.

⁵⁰ Frontline Comments at Attachment A, 10.

⁵¹ Further, such a scheme would require widespread collusion. For example, if one bidder tried to hold down values, another bidder might see an opportunity to acquire a license for the reserve price – which may be at a discount to its market value. This is the classic prisoner’s dilemma.

⁵² Frontline Comments at 16.

the D Block license winner to negotiate in good faith with the public safety licensee.⁵³ However, while MetroPCS is sympathetic to Frontline's dilemma, MetroPCS strongly believes that the D Block licensee should pay a penalty if it does not come to an agreement with the public safety licensee. As MetroPCS repeatedly has pointed out, the requirement to construct a public safety network is not enough to prevent speculators, and other parties who have no interest in actually aiding public safety, from bidding on the D block spectrum – and then keeping the valuable 10 MHz of commercial spectrum that it received at a huge discount, while straying from any public safety responsibilities. Indeed, having a fairly set reserve price will allow serious bidders, such as Frontline, the best opportunity to acquire the spectrum at a fair market value. Accordingly, the Commission must continue to maintain strong incentives for any D Block license winner to negotiate and complete an agreement with the public safety licensee, and thus must impose a substantial financial penalty on the D Block licensee in the event that an agreement with the public safety licensee is not reached.

III. IN THE EVENT THE BUREAU ADOPTS PACKAGE BIDDING FOR THE C BLOCK IN THE INITIAL AUCTION, IT SHOULD REVISE ITS PROCEDURES TO DECREASE ANY BIAS IN FAVOR OF THE PACKAGE BIDDER

The comments filed in response to the *Notice* reinforce the strongly held MetroPCS belief that the Bureau should not adopt package bidding procedures for either the initial auction, or any subsequent auction, for the 700 MHz Band.⁵⁴ The comments are replete with questions about, challenges to, and recommended changes to the proposed package bidding rules.⁵⁵ These comments reinforce and exacerbate the MetroPCS concern that there is insufficient time to craft

⁵³ *Id.* at 16. Frontline concedes that this issue is properly dealt with in a petition for reconsideration, not in these comments.

⁵⁴ MetroPCS Comments at 10-13, 21-22.

⁵⁵ *Id.* at 10-13; Karen Wrege and Karla Hoffman Comments at 2-11; Frontline Comments at Attachment A, 23-24; Coalition for 4G in America Comments at 3, 6-7; US Cellular Comments at 5-9.

a coherent set of rules that will not have severe adverse unintended consequences and even less time to create the necessary computer programs to allow this form of auction to proceed. If the Bureau nonetheless adopts package bidding for the initial auction, it should revise a number of its procedures in accordance with comments received in this proceeding. In particular, MetroPCS urges the Bureau to adopt rules that will level the playing field between package bidders and individual license bidders for the Upper 700 MHz C Block. The Bureau also should revise its procedures to ensure that they do not “create major financial risks for bidders who may be interested in both C Block license and similar regions in other blocks.”⁵⁶

First, the Bureau needs to clarify its rules with regard to what happens if a bidder has provisionally-winning bids which exceed its eligibility in the closing round of the auction. Under the Bureau’s proposed “considered bids” procedures, it is possible that a bidder will have provisionally winning bids which exceed its eligibility. Since the Bureau’s proposed “dropped” bid procedures only apply to non-provisionally winning bids, it is possible that the auction could end with a bidder having a massive exposure liability problem. MetroPCS suggests that the Bureau should allow bidders to choose themselves how to resolve this situation. Bidders should not be forced to acquire additional licenses due to a non-provisionally winning package bid becoming “reactivated.” Indeed, this could create massive financial liability for potential bidders and could result in bidders not bidding on the C Block licenses at all in order to avoid this scenario, or defaulting once they are declared the high bidder.⁵⁷ On the other hand, it is possible that a bidder would welcome the opportunity to purchase two sets of licenses, even though their eligibility has been exceeded – due to no fault of their own. A bidder should be allowed to

⁵⁶ Karen Wrege and Karla Hoffman Comments at 9.

⁵⁷ As noted in MetroPCS’ Comments, the Bureau’s dropped bid procedures are too heavily biased in favor of package bidders. MetroPCS Comments at 17-21.

choose the particular license it wants, as well as whether it would like both licenses. This is the only fair and equitable solution for the Bureau to adopt – otherwise, it risks eliminating competition for the Upper 700 MHz C Block, as bidders will not risk being caught with the massive financial exposure associated with having more provisionally winning bids than it bargained for or has financing to support.

Moreover, MetroPCS agrees with US Cellular that a bidder with provisionally winning bids on licenses not subject to package bidding “should be permitted to free up eligibility without penalty in any round where that bidder would otherwise be prevented from submitting a new provisionally winning bid on a C Block license.”⁵⁸ As noted previously by MetroPCS, “[a]llowing bidders the flexibility to withdraw and rebid will ensure that robust competition develops for the individual C Block licenses.”⁵⁹ MetroPCS also agrees with the corresponding suggestion of Karen Wrege and Karla Hoffman to “[a]llow participants who drop bids in the C block licenses to reinstate a dropped bid at any time during the auction as long as the bidder complies with all other bidding requirements, including, for example, having sufficient eligibility.”⁶⁰ Adopting these revised procedures will allow bidders to compete actively with any package bidder for Upper 700 MHz C Block licenses and will not punish bidders who bid on individual licenses.

Next, as noted by US Cellular, the Bureau “should not use complex special procedures for scaling up the “current price estimate” for individual REAG licenses when a package bid is provisionally winning.”⁶¹ MetroPCS agrees with the US Cellular proposal that “the Bureau

⁵⁸ US Cellular Comments at 9.

⁵⁹ MetroPCS Comments at 21.

⁶⁰ Karen Wrege and Karla Hoffman Comments at 11.

⁶¹ US Cellular Comments at 6.

instead use the same scaling up procedure in such situations as it is proposing to use to calculate the CPE for a package where individual REAG licenses are provisionally winning, i.e., the CPEs are simply equal to the current bids on those individual REAG licenses, as is the case in a standard simultaneous multiple round auction.”⁶² The Bureau must avoid using any type of procedure that could allow it to act as an arbiter in setting non-market based prices which could affect the auction’s outcome.

Lastly, MetroPCS agrees with the Coalition for 4G in America that a bidder should have the flexibility to drop a non-provisionally winning bid on a package of licenses, and then be able to bid on the underlying licenses on an individual basis.⁶³ This is in line with the Commission’s general policy of allowing bidders greater flexibility to bid in the auction. In this case, the bidder would not be permitted to bid on that package again, but the bidder should “have the flexibility to shift strategies and to focus on smaller individual licenses that comprise the package.”⁶⁴

IV. OTHER MISCELLANEOUS ISSUES

A. The Bureau Should Not Adopt any “Last and Final Bid” Procedures

A number of parties ill-advisably request that the Bureau adopt procedures such as a formal stopping rule which would allow bidders to meet the reserve price just prior to the close of the auction – in essence, a last and final bid procedure.⁶⁵ MetroPCS opposes any “last and final bid” rules, as rules of this type allow for a gaming of the auction system and the Commission’s rules. Under a last and final bid procedure, bidders who retain eligibility but are not currently the provisionally high bidder would be able to acquire licenses from bidders who currently are the provisionally high bidder. This would present the current provisionally high

⁶² *Id.* at 6.

⁶³ Coalition for 4G in America Comments at 6.

⁶⁴ *Id.* at 6.

⁶⁵ *Id.* at 10-11;

bidder with a Hobbson's choice – increase the bid to overpay even though no one else may want the license, or risk losing it to someone who may have eligibility at the right time. These kinds of results do not lead to a successful auction and should not be adopted.

B. The Bureau Should Clarify that any Re-auction Will Be Classified as a Separate Auction for Bidding Purposes

MetroPCS agrees with Verizon Wireless that the Bureau should clarify that a re-auction will be treated as an entirely separate auction for bidding purposes.⁶⁶ Both bid withdrawals and activity rule waivers should be reset for any subsequent auction, “regardless of whether a bidder withdrew bids for any licenses or used a waiver in any round in the first auction.”⁶⁷ Bidders will not know during the initial auction whether a subsequent auction will occur, and thus must be able to use its bid withdrawals and activity waivers without regard to whether a subsequent auction will actually occur. This should also apply to “dropped” bids, as an eligible bidder who “drops” a bid in the C Block should not be prevented from participating in any re-auction of that spectrum.⁶⁸

C. The Bureau Should Add a Stage One with a 60% Activity Threshold to the 700 MHz Band Auction if Package Bidding is Adopted

MetroPCS supports US Cellular's proposal to add a first stage of the auction with a 60% activity threshold, followed by a second stage with an 80% activity threshold and a third stage with a 95% activity threshold, but only if the Bureau proceeds with having package bidding.⁶⁹ MetroPCS agrees with US Cellular that starting at an 80% threshold “would unfairly accelerate the auction to the significant disadvantage of smaller and regional bidders which will need time to acquaint themselves with the many new features and procedures to be incorporated into the

⁶⁶ Verizon Wireless Comments at 7.

⁶⁷ *Id.* at 7.

⁶⁸ *Id.* at 6.

⁶⁹ US Cellular Comments at 4-5.

FCC's auction procedures."⁷⁰ However, MetroPCS urges the Commission to use its discretion carefully in order to ensure that the initial auction and the subsequent auction are both completed in a timely manner.

D. The Bureau Should Clarify All Relevant Rules for Both the Initial and any Subsequent Auction Prior to the Auction Process Beginning

Lastly, as noted by Frontline, the Bureau should endeavor to clarify beforehand all of the rules for any re-auction.⁷¹ Auction participants need to have a clear understanding of all rules that will apply prior to both auctions, so that they can assess their strategy for the auctions. It is critical that potential bidders have all necessary information regarding both the initial auction and any possible subsequent auction to allow them to plan their bidding strategies accordingly.

⁷⁰ *Id.* at 4.

⁷¹ Frontline Comments at Attachment A, 17.

V. CONCLUSION

In light of the foregoing, MetroPCS respectfully requests that the Bureau adopt auction procedures in conformance with these Reply Comments.

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September 7, 2007